

FILED

Clerk
District Court

AUG 30 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

DAVID G. BANES, Esq.
O'Connor Berman Dotts & Banes
Second Floor, Nauru Building
P.O. Box 501969
Saipan, MP 96950
Telephone No. (670) 234-5684
Facsimile No. (670) 234-5683

Attorneys for Plaintiffs Elenita A. Santos and Angel Santos

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

ELENITA A. SANTOS and
ANGEL SANTOS,

Plaintiffs,

vs.

HONGKONG ENTERTAINMENT
(OVERSEAS) INVESTMENTS LIMITED
dba TINIAN DYNASTY HOTEL &
CASINO, and CENTURY INSURANCE
CO. LIMITED,

Defendants.

) CIVIL CASE NO. 04-0030

)

)

) DECLARATION OF DAVID G. BANES
) IN SUPPORT OF OPPOSITION FOR
) PROTECTIVE ORDER

)

) Judge: Munson, Chief Judge

) Date: September 1, 2005

) Time: 9:00 a.m.

)

)

)

)

)

)

I, David G. Banes, declare under the penalty of perjury that the following is true and based upon my personal knowledge, except where noted otherwise, and if called to testify, I could do so competently:

1. I tried multiple times to schedule Defendants' deposition beginning almost six months ago (March 14, 2004)(See Exhibit A).

2. Receiving no response, I wrote two more letters in April 2005. (See Exhibits B and C).

ORIGINAL

1 3. At about the same time (May 2005), I asked to meet and confer with Defendants
2 related to Defendants' responses to Plaintiffs' discovery requests. Although Defendants agreed
3 to meet, Defendants did not commit to any specific date. Defendants' failure to commit implied
4 to me that Defendants' counsel was busy but would meet later.

5
6 4. I wrote to Defendants again on July 7 and 19th following up as to the discovery
7 disputes. *See* Exhibits F and H. I even suggested we schedule a discovery conference with the
8 Court and informed Defendants that we could not depose Defendants without these responses.
9 *Id.* In particular Plaintiffs were concerned that if we conducted Tinian Dynasty's deposition
10 before resolving the dispute as to it providing beforehand financial information, it would either
11 result in more than one deposition or alternatively Tinian Dynasty refusing to appear and be
12 deposed again. Defendants refused to agree to a Discovery Conference and suggested we could
13 probably work these issues out without the Court's intervention.

14
15 5. Finally we tentatively agreed to depose Defendants on July 29, 2005. *See* Exhibit
16 G. However, as best as I can recall, we agreed to continue the deposition due to: a) Plaintiffs
17 on-going discovery disputes with Defendants; and b) the Complaint was recently amended to
18 include Mr. Santos and to allege punitive damages.

19
20 6. Relatedly, Defendants noticed the depositions of Plaintiffs. Each despite their
21 advanced age, flew from Guam and appeared at the agreed upon time and place. Indeed, Mrs.
22 Santos was even placed under oath. At Defendants' suggestion however, the depositions were
23 continued to an unspecified future date.

24
25 7. Mr. Thompson and I have an excellent working relationship and frequently grant
26 each other's requests for extensions of time. Moreover, as we had an on-going discovery
27 disputes, and Mr. Thompson had suggested we could probably resolve our discovery disputes, I
28 did not file a Motion to Compel.

3/14/05

SAIPAN OFFICE
Second Floor, Nauru Building
P.O. Box 501969
Saipan, MP 96950-1969
Telephone: (670) 234-5684/5
Fax: (670) 234-5683
E-mail: attorneys@saipan.com

HONOLULU OFFICE
Suite 2800, Pacific Tower
Bishop Square, 1001 Bishop Street
Honolulu, Hawaii 96813-3580
Telephone: (808) 585-8858
Fax: (808) 599-4198
E-mail: mark@shklovlaw.com

O'CONNOR BERMAN DOTTS & BANES
ATTORNEYS AT LAW
SAIPAN OFFICE
www.pacific-lawyers.com

GUAM OFFICE
Suite 503, Bank of Guam Bldg.
111 Chalan Santo Papa
Hagåtña, Guam 96910
Telephone: (671) 477-2778
Fax: (671) 477-4366
E-mail: bermlaw@kuentos.guam.net

POHNPEI OFFICE
Second Floor, Ace Commercial Building
P.O. Box 1491, Kolonia, Pohnpei,
Federated States of Micronesia, 96941
Telephone: (691) 320-2868
Fax: (691) 320-5450
E-mail: bermlaw@mail.fm

March 14, 2005

By Fax

Colin Thompson
P.O. Box 1280
Saipan, MP 96950
Fax: 322-47716

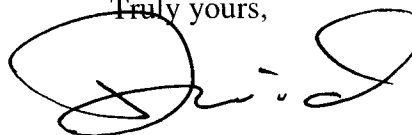
Re: *Santos v. Tinian Dynasty*

Dear Colin:

Mrs. Santos is currently staying with her son on Guam. Given her injuries, we would prefer if you depose her there. She would also make herself available for an IME. Also, when may we depose Tinian Dynasty?

Please let me know. Thanks.

Truly yours,



David G. Banes

bcc: Mrs. Santos (c/o Joe)

4/25/05

SAIPAN OFFICE
Second Floor, Nauru Building
P.O. Box 501969
Saipan, MP 96950-1969
Telephone: (670) 234-5684/5
Fax: (670) 234-5683
E-mail: attorneys@saipan.com

O'CONNOR BERMAN DOTT & BANES
ATTORNEYS AT LAW
SAIPAN OFFICE
www.pacific-lawyers.com

GUAM OFFICE
Suite 503, Bank of Guam Bldg.
111 Chalan Santo Papa
Hagåtña, Guam 96910
Telephone: (671) 477-2778
Fax: (671) 477-4366
E-mail: bermlaw@kuentos.guam.net

HONOLULU OFFICE
Suite 2800, Pacific Tower
Bishop Square, 1001 Bishop Street
Honolulu, Hawaii 96813-3580
Telephone: (808) 585-8858
Fax: (808) 599-4198
E-mail: mark@shklovlaw.com

POHNPEI OFFICE
Second Floor, Ace Commercial Building
P.O. Box 1491, Kolonia, Pohnpei,
Federated States of Micronesia, 96941
Telephone: (691) 320-2868
Fax: (691) 320-5450
E-mail: bermlaw@mail.fm

April 25, 2005

By Telecopy

Colin Thompson, Esq.
P.O. Box 501280
Saipan, MP 96950
Fax: 322-4716

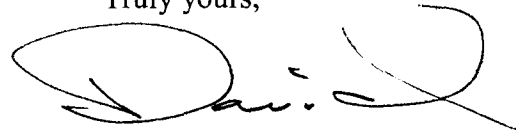
Re: Santos v. Tinian Dynasty

Dear Colin:

I hope you are well and you had an enjoyable weekend. What are some convenient dates to schedule Defendant's deposition? Once we have some dates I will send you a 30(b)(6) notice including schedule of topics. Please let me know. Thanks.

Also, to let you know, Dr. Hofer will provide us with a report around May 20th. However she did tell me that although her treatment is not yet complete, she concludes Mrs. Santos is suffering from high degrees of depression and anxiety as a direct result of the incident and the injuries she received.

Truly yours,

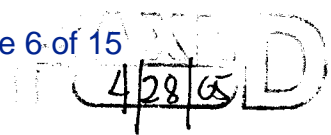


David G. Banes

bcc: Joe Santos (by email)
Elaine Santos (by email)

3087-01-050425-Ltr-CThompson-rcr

Exhibit "B"



SAIPAN OFFICE
Second Floor, Nauru Building
P.O. Box 501969
Saipan, MP 96950-1969
Telephone: (670) 234-5684/5
Fax: (670) 234-5683
E-mail: attorneys@saipan.com

HONOLULU OFFICE
Suite 2800, Pacific Tower
Bishop Square, 1001 Bishop Street
Honolulu, Hawaii 96813-3580
Telephone: (808) 585-8858
Fax: (808) 599-4198
E-mail: mark@shklovlaw.com

O'CONNOR BERMAN DOTT & BANES
ATTORNEYS AT LAW
SAIPAN OFFICE
www.pacific-lawyers.com

GUAM OFFICE
Suite 503, Bank of Guam Bldg.
111 Chalan Santo Papa
Hagåtña, Guam 96910
Telephone: (671) 477-2778
Fax: (671) 477-4366
E-mail: bermlaw@kuentos.guam.net

POHNPEI OFFICE
Second Floor, Ace Commercial Building
P.O. Box 1491, Kolonia, Pohnpei.
Federated States of Micronesia, 96941
Telephone: (691) 320-2868
Fax: (691) 320-5450
E-mail: bermlaw@mail.fm

April 28, 2005

By Telecopy

Colin Thompson, Esq.
P.O. Box 501280
Saipan, MP 96950
Fax: 322-47716

Re: *Santos v. Tinian Dynasty*

Dear Colin:

According to Mrs. Santos, Dr. Nagarkatti recommends that she get surgery on the Mainland. He again concludes the rod is too long but cautious that it may be difficult to remove and its removal could weaken her leg and make it more susceptible to fracture. In order to give a final report, he took a series of x-rays and she will have to return next week. Dr. Nagarkatti will also be leaving for a long vacation soon, so if you wish to depose him, please make the suitable arrangements.

By the way, every time I talk to Mrs. Santos about her injuries she cries, not for very long or in loud self-pitying way, just softly. You will recall Dr. Hofer has diagnosed her as suffering from acute anxiety and depression. Again, please let me know when we can depose Tinian Dynasty.

Thanks.

Truly yours,

David G. Banes

bcc: Joe Santos (by email)
Elaine Santos (by email)

SAIPAN OFFICE
Second Floor, Nauru Building
P.O. Box 501969
Saipan, MP 96950-1969
Telephone: (670) 234-5684/5
Fax: (670) 234-5683
E-mail: attorneys@saipan.com

HONOLULU OFFICE
Suite 2800, Pacific Tower
Bishop Square, 1001 Bishop Street
Honolulu, Hawaii 96813-3580
Telephone: (808) 585-8858
Fax: (808) 599-4198
E-mail: mark@shklowlaw.com

O'CONNOR BERMAN DOTTS & BANES
ATTORNEYS AT LAW
SAIPAN OFFICE
www.pacific-lawyers.com

5/4/05
GUAM OFFICE
Suite 503, Bank of Guam Bldg.
111 Chalan Santo Papa
Hagåtña, Guam 96910
Telephone: (671) 477-2778
Fax: (671) 477-4366
E-mail: bermlaw@kuentos.guam.net

POHNPEI OFFICE
Second Floor, Ace Commercial Building
P.O. Box 1491, Kolonia, Pohnpei,
Federated States of Micronesia, 96941
Telephone: (691) 320-2868
Fax: (691) 320-5450
E-mail: bermlaw@mail.fm

May 4, 2005

By Telecopy and Email

Colin Thompson, Esq.
P.O. Box 501280
Saipan, MP 96950
Fax: 233-0776
colin.thompson@saipan.com

Re: Santos v. Tinian Dynasty

Dear Colin:

Congratulations again on your new office.

I just want to confirm that we have agreed to meet-and-confer as to setting new dates such as for discovery and identifying experts. I look forward to meeting with you after you have had the chance to settle in.

Thanks.

Truly yours,



David G. Banes

bcc: Joe Santos (by email)
Elaine Santos (by email)

3087-01-050504-Ltr-CThompson-rcr

Exhibit "D"

Colin M. Thompson
Attorney at Law

PMB 917 Box 10001, Saipan, MP 96950, U.S.A.
E-mail: colin.thompson@saipan.com

Telephone No. : (670) 233-0777
Facsimile No. : (670) 233-0776

Via Hand Delivery

June 24, 2005

David Banes
O'Connor, Berman, Dotts & Banes Law Offices
2nd Floor Nauru Building
P.O. Box 501969
Susupe, Saipan
MP 96950

Re: Elenita Santos vs. Hongkong Ent., (Overseas) Invst. Ltd. et al
Civil Action No. 04-0030

Dear David:

This follows our communications over the last several days. There are number of pending discovery issues to address. We reached broad understanding of the work that needs to be done. Precise scheduling of the events remains to be confirmed.

Defendant agreed to provide discovery responses on or before July 6, 2005. The discovery responses include Plaintiffs First Set of Requests for Admission and Requests for Production of Documents. Additionally, Defendant's responses to Plaintiff's Second Set of Interrogatories and Request for Production of Documents are due on June 30, 2005. If you have no objection, Defendant will provide these responses on July 6, 2005.

Relative to Request For Admission No. 6., there were no documents attached as Exhibit "A". Please forward them to my office so that we can properly respond. You also agreed to confirm the document numbers you produced thus for in discovery.

Enclosed are deposition Notices for the Plaintiffs. We noticed the depositions for July 14th and 15th based on discussion yesterday. But, we are willing to make any necessary and reasonable accommodation for your clients.

You have asked to depose both Tinian Dynasty and Century Insurance, Co., Ltd. (CIC). Please let me know the subject matter of your proposed depositions and I will make arrangements for my clients' deposition. The relevance of CIC's deposition is unclear to me. We do not waive and expressly reserve all rights to challenge the legal appropriateness of taking CIC's deposition.

Admitted to practice law in the State of California and
The Commonwealth of the Northern Mariana Islands

Exhibit "E"

Letter to David G. Banes

Re: Elenita Santos vs. Hongkong Ent. Invst. Ltd., et. al.

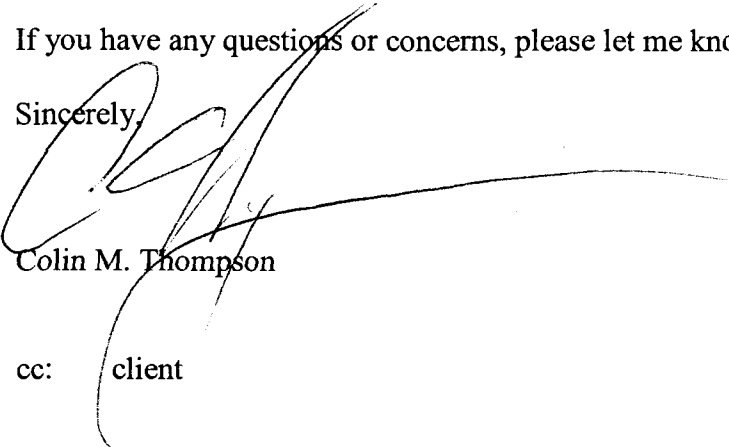
June 24, 2005

Pages 2 of 2

Finally, we would like to arrange for your client to be examined by Dr. Claudio on Saipan on July 6, 2005 at 11:00 a.m. You asked yesterday whether CIC would pay for Mrs. Santos to travel with a companion to Saipan for the Independent Medical Examination. The law may be unclear about whose obligation it is to pay for the Plaintiffs' travel under these circumstances. However, I know of no authority supporting the requirement to pay for a companion. Nonetheless, I will take your request to my client and then let you know.

If you have any questions or concerns, please let me know.

Sincerely,



Colin M. Thompson

cc: client

CMT/esl

7/7/05

SAIPAN OFFICE
Second Floor, Nauru Building
P.O. Box 501969
Saipan, MP 96950-1969
Telephone: (670) 234-5684/5
Fax: (670) 234-5683
E-mail: attorneys@saipan.com

O'CONNOR BERMAN DOTTS & BANES
ATTORNEYS AT LAW
SAIPAN OFFICE
www.pacific-lawyers.com

GUAM OFFICE
Suite 503, Bank of Guam Bldg.
111 Chalan Santo Papa
Hagåtña, Guam 96910
Telephone: (671) 477-2778
Fax: (671) 477-4366
E-mail: bermlaw@kuentos.guam.net

HONOLULU OFFICE
Suite 2800, Pacific Tower
Bishop Square, 1001 Bishop Street
Honolulu, Hawaii 96813-3580
Telephone: (808) 585-8858
Fax: (808) 599-4198
E-mail: mark@shklovlaw.com

POHNPEI OFFICE
Second Floor, Ace Commercial Building
P.O. Box 1491, Kolonia, Pohnpei,
Federated States of Micronesia, 96941
Telephone: (691) 320-2868
Fax: (691) 320-5450
E-mail: bermlaw@mail.fm

July 7, 2005

By Telecopy and Email

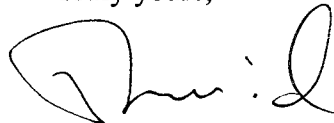
Colin Thompson, Esq.
P.O. Box 501280
Saipan, MP 96950
Fax: 233-0776
colin.thompson@saipan.com

Re: Santos v. Tinian Dynasty et al.

Dear Colin:

We have Defendant's Responses to our discovery. We would like to meet and confer as soon as practicable in the hopes that a Motion to Compel may be avoided. Please let me know when you are available. Thank you.

Truly yours,



David G. Banes

bcc: Joe Santos (by email)
Elaine Santos (by email)

3087-01-050707-Ltr-CThompson-rcr

Exhibit "F"

SAIPAN OFFICE
Second Floor, Nauru Building
P.O. Box 501969
Saipan, MP 96950-1969
Telephone: (670) 234-5684/5
Fax: (670) 234-5683
E-mail: attorneys@saipan.com

HONOLULU OFFICE
Suite 2800, Pacific Tower
Bishop Square, 1001 Bishop Street
Honolulu, Hawaii 96813-3580
Telephone: (808) 585-8858
Fax: (808) 599-4198
E-mail: mark@shklovlaw.com

O'CONNOR BERMAN DOTTS & BANES
ATTORNEYS AT LAW
SAIPAN OFFICE
www.pacific-lawyers.com

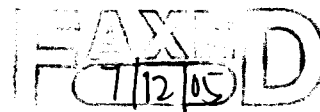
GUAM OFFICE
Suite 503, Bank of Guam Bldg.
111 Chalan Santo Papa
Hagåtña, Guam 96910
Telephone: (671) 477-2778
Fax: (671) 477-4366
E-mail: bermlaw@kuentos.guam.net

POHNPEI OFFICE
Second Floor, Ace Commercial Building
P.O. Box 1491, Kolonia, Pohnpei,
Federated States of Micronesia, 96941
Telephone: (691) 320-2868
Fax: (691) 320-5450
E-mail: bermlaw@mail.fm

July 12, 2005

By Telecopy and Email

Colin Thompson, Esq.
P.O. Box 501280
Saipan, MP 96950
Fax: 233-0776
colin.thompson@saipan.com



Re: Santos v. Tinian Dynasty et al.

Dear Colin:

We are having difficulty getting a timely expert report as we are missing records (CHC x-rays and ct scan). May we have extension of time?

To reply to some of your criticisms of our Motion, an expert opinion is not necessary. The UBC sets forth the required standard of care, *i.e.* a reasonably safe stairway complies with the UBC which in turn means a reasonably safe stairway needs handrails. It is uncontestable that the stairways did not have handrails. Therefore applying the most elementary form of Aristotlean logic leads us inevitably to the conclusion the stairway was not reasonably safe. We only used Dr. Firestone as he had measured the stairway which establishes the **additional** requirement that there must also be a center-rail. As to Mrs. Santos' medical records, her being injured is really a collateral issue. That is to say, the records are not there to prove the extent of her injury but just that she was injured. Again I believe that issue of fact (that she was injured) is uncontestable. So do you really have an issue as to authenticity? If so, I can get them verified but we are curious as to why we must.

Finally, may we depose Tinian Dynasty on July 29th?

Please let me know especially as to extending the expert deadline so that I can timely file a Motion for Extension if necessary.

Truly yours,

David G. Banes

bcc: Joe Santos (by email)
Elaine Santos (by email)

7/19/05

SAIPAN OFFICE
Second Floor, Nauru Building
P.O. Box 501969
Saipan, MP 96950-1969
Telephone: (670) 234-5684/5
Fax: (670) 234-5683
E-mail: attorneys@saipan.com

HONOLULU OFFICE
Suite 2800, Pacific Tower
Bishop Square, 1001 Bishop Street
Honolulu, Hawaii 96813-3580
Telephone: (808) 585-8858
Fax: (808) 599-4198
E-mail: mark@shklovlaw.com

O'CONNOR BERMAN DOTT & BANES
ATTORNEYS AT LAW
SAIPAN OFFICE
www.pacific-lawyers.com

GUAM OFFICE
Suite 503, Bank of Guam Bldg.
111 Chalan Santo Papa
Hagåtña, Guam 96910
Telephone: (671) 477-2778
Fax: (671) 477-4366
E-mail: bermmlaw@kuentos.guam.net

POHNPEI OFFICE
Second Floor, Ace Commercial Building
P.O. Box 1491, Kolonia, Pohnpei,
Federated States of Micronesia, 96941
Telephone: (691) 320-2868
Fax: (691) 320-5450
E-mail: bermmlaw@mail.fm

July 19, 2005

By Telecopy and Email

Colin Thompson, Esq.
P.O. Box 501280
Saipan, MP 96950
Fax: 233-0776
colin.thompson@saipan.com

Re: Santos v. Tinian Dynasty et al.

Dear Colin:

As we discussed before, we need to meet and confer about Century's responses. We cannot properly depose Tinian Dynasty without certain responses and corresponding documents.

We are particularly concerned with Tinian Dynasty's failure to substantively respond to Interrogatory Request Nos. 1, 3-5, Requests to Admit 4, 8, 14-15 and Request to Produce Nos. 4, 8, 14-15.

We are also a bit upset that we agreed to give Defendants additional time to respond conditioned in part on Defendants agreeing "Incident" meant "Occurrence". Yet Defendants objected to this anyway.

I initially drafted this letter before we chatted. So to confirm, we will meet this Thursday around 5:00 p.m. Thank you.

Truly yours,



David G. Banes

bcc: Joe Santos (by email)
Elaine Santos (by email)

attorneys@saipan.com

From: attorneys@saipan.com
Sent: Tuesday, August 09, 2005 3:23 PM
To: Colin Thompson
Subject: Santos v. Tinian Dynasty et al.



3087-01-050809-PL
-Stip&PropOrd...

Dear Colin:

I attach a draft of a proposed stipulation which I believe incorporates the parties' agreement and concerns. Please let me know if it is acceptable.

Also as soon as possible when you return, we would like to meet-and-confer not only as to Defendants' previous discovery responses but also Tinian Dynasty's latest responses. I would like to provisionally schedule with the Court a discovery conference for either September 1 or 2 as I expect we will not be able to resolve these issues. Relatedly, we cannot adequately take Tinian Dynasty's deposition without those responses.

Please let me know. Thanks.

Truly yours,

David G. Banes

att: (as stated)

attorneys@saipan.com

From: attorneys@saipan.com
Sent: Friday, August 19, 2005 1:02 PM
To: Colin Thompson
Subject: Santos v. Tinian Dynasty et al.

Dear Colin:

I hope you are well.

When can we meet-and-confer as to our outstanding discovery issues? How about lunch
on Tuesday?

Please let me know. Thanks.

Truly yours,

David G. Banes

FAXED
8/24/05

SAIPAN OFFICE
Second Floor, Nauru Building
P.O. Box 501969
Saipan, MP 96950-1969
Telephone: (670) 234-5684/5
Fax: (670) 234-5683
E-mail: attorneys@saipan.com

O'CONNOR BERMAN DOTTS & BANES
ATTORNEYS AT LAW
SAIPAN OFFICE
www.pacific-lawyers.com

GUAM OFFICE
Suite 503, Bank of Guam Bldg.
111 Chalan Santo Papa
Hagåtña, Guam 96910
Telephone: (671) 477-2778
Fax: (671) 477-4366
E-mail: bermlaw@kuentos.guam.net

HONOLULU OFFICE
Suite 2800, Pacific Tower
Bishop Square, 1001 Bishop Street
Honolulu, Hawaii 96813-3580
Telephone: (808) 585-8858
Fax: (808) 599-4198
E-mail: mark@shklovlaw.com

POHNPEI OFFICE
Second Floor, Ace Commercial Building
P.O. Box 1491, Kolonia, Pohnpei,
Federated States of Micronesia, 96941
Telephone: (691) 320-2868
Fax: (691) 320-5450
E-mail: bermlaw@mail.fm

August 24, 2005

By Telecopy and Email

Colin Thompson, Esq.
P.O. Box 501280
Saipan, MP 96950
Fax: 233-0776
colin.thompson@saipan.com

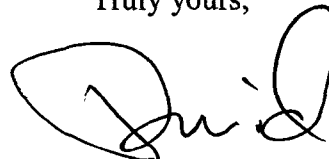
Re: Santos v. Tinian Dynasty et al.

Dear Colin:

This is to confirm we will meet at 10:00 a.m. at your office to try to resolve Plaintiffs' outstanding discovery disputes although from our phone conversation it appears we will have to file a Motion to Compel.

See you then. Thanks.

Truly yours,



David G. Banes

bcc: Joe Santos (by email)
Elaine Santos (by email)

3087-01-050824-Ltr-CThompson-rcr

Exhibit "K"